



February 2, 2000

Ms. Barbara G. Heptig
Assistant City Attorney
City of Arlington
P O Box 1065
Arlington, Texas 76004-1065

OR2000-0354

Dear Ms. Heptig:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 131799.

The City of Arlington Police Department (the “department”) received a request for “a copy of any and all 911 communications” and “transcripts of any and all radio communications” regarding a November 11, 1999 incident “in the 4700 block of Audubon Drive” and involving a named peace officer. You have provided for our review information responsive to the request, which you explain consists of a 911 tape recording and a radio traffic printout. You assert that the requested information is excepted from disclosure under section 552.101 of the Government Code in conjunction with the common law right to privacy. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses the common law right to privacy. The common law right to privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, *and* (2) the information is not of legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

The Texas Supreme Court in *Industrial Foundation* articulated examples of information about private citizens that meets the first prong of this test, and included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. This office has also acknowledged such privacy interests. *See, e.g.*,

Open Records Decision Nos. 470 (the fact that a person broke out in hives as a result of severe emotional distress is protected by common law privacy), 455 (1987) (the kinds of prescription drugs a person is taking is protected by common law privacy), 343 (1982) (information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, and emotional/mental distress is protected by common law privacy).

We thus agree that much of the information at issue meets the first prong of the common law privacy test. However, to be excepted from disclosure by common law privacy, the information must also be of no legitimate public concern. You state that “as no arrest was made in this case, the public does not have a legitimate interest in the information.” We disagree and determine that a legitimate public interest exists in some of the information at issue. The facts before us indicate substantial public resources were spent on this incident. Moreover, the public’s interest in information regarding a police officer in active duty status is understandably heightened, as compared to that of a private citizen or public employee whose work does not involve life-endangering situations, and who neither carries a gun nor is charged with protecting the public. *See, e.g.*, Open Records Decision No. 422 at 2 (1984) (the presumption that the details of a self-inflicted wound are protected by common law privacy may be overcome by a demonstration that the public has a substantial interest in a particular incident). As both prongs of the common law privacy test have not been met with respect to all of the submitted information, we conclude that some of the information is not excepted from disclosure by section 552.101 in conjunction with the common law right to privacy. We agree that the 911 tape recording must be withheld in its entirety. We have also marked certain private information in the radio traffic printout which you must redact. Except as otherwise noted herein, the remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

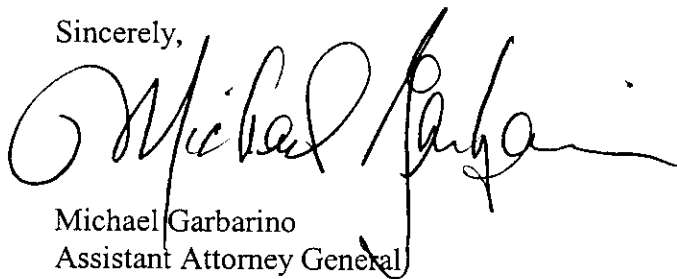
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Garbarino". The signature is fluid and cursive, with a long horizontal stroke at the end.

Michael Garbarino
Assistant Attorney General
Open Records Division

MG/jc

Ref: ID# 131799

Encl. Submitted documents

cc: Mr. Robert Tharp
Arlington Star-Telegram
1111 West Abram Street
Arlington, Texas 76013
(w/o enclosures)